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Mel Carnahan, Governor • Stephen M. Mahfood, Director

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL QUALITY

P.O. Box 176 Jefferson City, MO 65102-0176

October 9, 1998

CERTIFIED MAIL - Z 289 841 328  
RETURN RECEIPT REQUESTED

Ms. Sandra L. Basham  
The Sherwin Williams Company -  
Paint Stores Division  
101 Prospect Avenue N.W.  
Cleveland, OH 44115-1075

Dear Ms. Basham:

I am responding to your January 27, 1998, letter to Ms. Kathy Flippin of this office (copy enclosed), with regard to your request for a legal opinion or determination by the Missouri Attorney General's Office "regarding the applicability of your state regulation over the federal requirements of satellite accumulation." My understanding is that all other aspects of this letter have been addressed by Letter-of-Warning (LOW) #98-SL.048, issued by the St. Louis Regional Office in September. Based on my reading of your letter, your true concern does not seem to be if the Missouri Attorney General would agree with the Missouri Department of Natural Resources that, as a state authorized under the federal Resource Conservation and Recovery Act (RCRA), the Missouri Hazardous Waste Management Law and Regulations are enforced throughout Missouri by both State and Federal authorities in lieu of the federal law and regulations. Rather, your concern seems to be whether the Environmental Protection Agency (EPA) would concur with that determination, or would attempt to enforce a dual or different standard for compliance.

I am therefore providing a copy of this correspondence as background to Beth Koesterer, P.E., RCRA Coordinator for the State of Missouri, EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101. I suggest you write and put your question to her directly in order to satisfy yourself on this issue. I will also take this opportunity to remind you that your company remains out of compliance with LOW #98-SL.048. By September 21, 1998, you were to submit quarterly report



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RCRA RECORDS CENTER



Ms. Sandra L. Basham  
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documentation in accordance with the requirements of the Letter-of-Warning. If you do not take timely action to comply, please expect the state to conduct elevated enforcement action to address your continuing failure.

Please continue to address all correspondence involving LOW #98-SL.048 to Ms. Rochelle Gibson of the St. Louis Regional Office. If you have any questions concerning this letter, please contact me at (573) 751-2032.

Sincerely,

HAZARDOUS WASTE PROGRAM



Thomas M. Judge, RG  
Environmental Specialist  
Hazardous Waste Enforcement Unit

TMJ:jh

Enclosure

c: Beth Koesterer P.E., EPA Region VII  
St. Louis Regional Office





The Sherwin-Williams Company  
101 Prospect Avenue, N.W.  
Cleveland, Ohio 44115-1075

January 27, 1998

Ms. Kathy Flippin  
Missouri Department of Natural Resources  
Chief, Hazardous Waste Enforcement Unit  
Hazardous Waste Program  
P.O. Box 176  
Jefferson City, Missouri 65102

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HAZARDOUS WASTE PROGRAM  
MISSOURI DEPARTMENT OF  
NATURAL RESOURCES

Dear Ms. Flippin:

SUBJECT: Notice of Violation #4200

Thank you for taking the time to discuss with me the issue of the alleged violations at the Sherwin-Williams Store 4355, located at 7601 Page, St. Louis, Missouri. It is my understanding that you claim Missouri is a RCRA-authorized state and, as such, oversees its own hazardous waste program and can promulgate rules that are more stringent than, but not in conflict with, those set forth in the Code of Federal Regulations (CFR). As requested, I have reassessed each of MDNR's alleged violations at Store 4355. This letter will address MDNR's concerns in the order in which they are listed on the final inspection report.

**1. Citation 10 CSR 25-5.262(2)(C)2-D(1) - "No containment system."**

Based on waste handling practices in 1997, federal regulation would classify Store 4355 as a small quantity generator, while Missouri law, which is, in this case, more restrictive, would cause it to be regulated as a large quantity generator. In Missouri, large quantity generator requirements include the necessity for a secondary containment system for the waste accumulation area. Per our conversation, it is my understanding that Store 4355 can avoid this requirement by certifying that it will initiate and observe waste handling practices that allow it to be considered a small quantity generator under Missouri regulations. To this end, the Store will manage its waste so that no more than 1000 kilograms of waste is generated in any one month and so that no more than 1000 kilograms of waste is disposed of at any one



time. The memo included as Attachment A documents that Store 4355 has been directed to handle their waste in this manner.

**2. Citation 10 CSR 25-5.262(2)(C)1 - "Containers of hazardous waste not labeled," and 4. Citation 10 CSR 25-5.262(2)(C)3 - "Satellite containers not marked with beginning date of accumulation."** Based on our discussion, it is my understanding that Missouri law also differs from the CFR in the area of satellite accumulation requirements. The Missouri code requires that the drums in the satellite storage area be marked with DOT hazardous waste labels and hazard class diamond labels. Additionally, the Missouri state code **10 CSR 25-5.262(C)3** instructs... *"In 40 CFR 262.34(c)(1)(ii), add the words 'Mark his containers either with the words 'Hazardous Waste' or with other words that identify the contents of the containers and the beginning date of satellite accumulation.'"*

Compliance with this regulation would require that Store 4355 mark drums, with a paint stick or some other indelible marker, with the date the drum was placed into use as a satellite receptacle. When the satellite drum is full and moved to the accumulation area, the start date of accumulation would be noted on the yellow hazardous label. This date would be the one from which the allowed 90-day storage period would be calculated. The Sherwin-Williams Company still harbors concerns regarding confusion that might be caused by marking a drum with two dates. While it is understood that Missouri regulations are granted primacy in this area, it is not clear if exclusion exists. It has been our experience that even where primacy has been given to the state, the federal government maintains the right to regulate. For this reason, Sherwin-Williams requests an opinion or determination by the Missouri State Attorney General's Office regarding the applicability of your state regulation over the federal requirements of satellite accumulation. In the interim, we will comply with your request.

**3. Citation 10 CSR 25-5.262(2)(C)2.F(II) - "No "No-smoking" sign by ignitable waste."** As requested signage has been placed, I feel this issue has been satisfactorily resolved.

**5 - 8. Citations related to deficiencies in manifest preparation** As we discussed, the manifest preparation errors identified did occur. Sherwin-Williams is meeting with the licensed hazardous waste vendor/transporter contracted to provide



transport for final disposal. The vendor prepared the manifests cited and, while this does not alleviate Sherwin-Williams of the responsibility of ensuring manifests are correct before the waste is shipped, it does identify a deficiency of service. The hazardous waste vendor involved will not be used again unless Sherwin-Williams is confident that they will prepare manifests properly, in accordance with the requirements of State of Missouri.

**9. Citation 10 CSR 25-5.262(2)(B)2.I - "Specific gravity of waste not listed on the manifest."** Presenting the specific gravity of the waste to be shipped is a requirement of the State of Missouri. Per our conversation, in an effort to comply with this requirement, an educated estimate of the specific gravity of the waste liquid will be made based on the known specific gravity of the wastes that comprise the load. This is the specific gravity that will be entered on the manifest.

**10. Citation 10 CSR 25-5.262(2)(D)1.B and 10 CSR 25-5.262(2)(D)1.E - "Failure to complete quarterly reporting of manifests and manifest summary reports."** After our discussion, it is my understanding the State of Missouri requires that, if a location transports more than one waste shipment in any one year, the generator report waste generation to the state on a quarterly basis. As all the waste generated and shipped for disposal in 1997 has been reported on the 1997 Annual Report, I feel reported on missed quarters in 1997 is not necessary. The store will begin to report quarterly as of March 1998.

**11. Citation 10 CSR 25-5.262(1) - "Contingency plan did not list addresses of emergency coordinators," and 12. Citation 10 CSR 25-5.262(1) - "Contingency plan did not list emergency equipment."** It is my understanding that these requirements are State of Missouri regulations for large quantity generators that activate if a generator generates more than 1000 kilograms of waste in any one month, or accumulates more than 1000 kilograms of waste at any time. As described in the response to citation 1 and in Attachment A, Store 4355 will certify that future waste handling protocols will be such that monthly generation and quantity accumulated before disposal both remain under 1000 kilograms. As you informed me, establishing and observing this management policy will allow the Store to avoid the "large quantity generator" requirements particular to Missouri.

MDNR  
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I believe the above response, actions taken, and policy documented in Attachment A satisfactorily address all the Department's issues. Please let me know if additional documentation of the described corrections and policy changes is necessary. Again, thank you for your assistance in resolving this complicated issue.

Sincerely,  
THE SHERWIN-WILLIAMS COMPANY

A handwritten signature in cursive script, appearing to read "Sandra L. Basham", followed by a horizontal line.

Sandra L. Basham  
Manager, Safety & Environmental Compliance  
Paint Stores Division

Attachment

c: C. Heinzman  
D. McConnell, S-W Legal



**ATTACHMENT A**



## Stores Services Safety & Environmental Compliance

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Receivers Location:

Date: 26 January 1998

To: T. Knuf

Subject: **Missouri Compliance**

We have been informed that, in the area of hazardous waste management, the State of Missouri is authorized by the federal government to promulgate their own regulations. For this reason, several of the rules are different than those described in the federal codes and many more stringent and restrictive.

The biggest area of difference appears to be in waste generator requirements. The State of Missouri activates secondary containment and emergency response/contingency planning requirements at a lower level than the federal codes. Under State law, a small quantity generator (per the federal definition) that exceeds certain levels is considered a large quantity generator and is treated as such. The State also has satellite drum marking requirements that differ from the federal rules the Company follows in nearly all cases.

In order to comply with the laws of Missouri, prevent fines, and avoid expensive and onerous requirements, the following practices should be followed at your store.

**Waste Generation** - As a small quantity generator, you should generate no more than 1000 kilograms (roughly 2200 pounds, 240 gallons, or 4.5 55-gallon drums) in any one month. If generation exceeds this rate, please contact me so that we may assess waste reduction options to avoid placing your store into large quantity generator status with all the associated burdensome requirements.

**Waste Accumulation** - Per Missouri law, a small quantity generator may not accumulate (hold for later shipment) more than 1000 kilograms of waste. Please organize your waste handling program so that drums are shipped every time there are four (4) full drums in the accumulation area. Remember that no hazardous waste may be held in the accumulation area for longer than 90 days.

**Drum Labeling** - When a satellite drum is placed into use, the date must be marked on the drum with a paint stick or other indelible marker. At this time, the drum must also have "hazardous waste" written on it, or be otherwise identified as a container of hazardous waste (apply yellow hazardous waste label with name of waste but the date line left blank). The diamond-shaped hazard class sticker should also be placed on the drum at this time. When the satellite drum is full and moved to the accumulation area, the date that accumulation starts should be entered onto the yellow waste label.

**Quarterly Reporting** - It is a requirement of the State of Missouri that businesses that ship more than one load of waste a year report waste generation and disposal on a quarterly basis. The necessary forms can be provided by your local MDNR contact. No forms will be sent to you. It is your responsibility to understand you are subject to this requirement, locate the needed forms, and submit them to the State.

Please implement these waste management practices immediately. If there are any questions, please contact me at 216-566-1710.

A handwritten signature in black ink, appearing to read 'S. Basham', with a long horizontal line extending to the right.

Sandra L. Basham  
Manager, Environmental Compliance  
Paint Stores Group